IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2642 OF 2007

Harish Dasumal Dubey ..Applicant
Vs
1. Narain Traders and anr. ..Respondents

Mr. S.S. Hardikar for applicant.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 14, 2007.

P.C.:

1. Heard Mr. Hardikar the learned counsel for the applicant-complainant who is seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned 7th Joint Civil Judge, J.D. and JMFC, Thane on 5/5/2007 in Summary Criminal Case No. 810 of 2002 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The complainant had gone to the court with a case that he had advanced a friendly loan of Rs.50,000/- and against a promissory note. By way of

repayment of the said loan amount, the accused had issued the cheque bearing No. 154715 dated 20/11/2001 for the amount of Rs.50,000/- drawn on Bank of Baroda, Ulhasnagar Branch and the said cheque was dishonoured for the reason "funds insufficient". After giving a statutory notice, he filed Summary Criminal Case No. 810 of 2002. The accused took a defence in his oral depositions that he had obtained loan from the complainant but the said loan was already repaid and the blank cheque which was given by way of a guarantee was sought to be encashed after the loan amount was repaid.

3. While in the witness box the complainant took a plea that against the loan advanced, a promissory note was handed over to him but the same could not bring on record during the entire trial. In the affidavit filed by the accused by way of examination-in-chief, he pointed out that an amount of Rs.75,725/- was paid by him on different occasions to the complainant and he also stated that an amount of Rs.45,000/- was paid to the complainant prior to the disputed cheque was dishonoured. The trial court,

therefore, held that against the liability of Rs.50,000/- of loan amount Rs.45,000/- was already received by the complainant and, therefore, accused was successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act, 1881. The trial court, therefore, recorded a finding that there was no legally enforceable liability against which the cheque was presented and sought to be encashed and consequently the complaint was dismissed and the accused was acquitted.

4. The reasoning set out by the trial court in the impugned order of acquittal does not call for any reconsideration by this court.

5. Hence, leave to appeal is hereby refused and the application is rejected.

(B.H. Marlapalle,J.)